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Federal Communications Commission
Office of the Secretary

Before the
MAIL BRANCH FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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In the Matter of

Regulatory Reform for)
Local Exchange Carriers) CC Docket No. 92-135
Subject to Rate of Return)
Regulation)

Comments of GVNW, Inc./Management

I. INTRODUCTION

1. GVNW, Inc./Management (GVNW) hereby submits these Comments in response to the NOTICE OF PROPOSED RULEMAKING released July 17, 1992. GVNW is a consulting company providing small local exchange carriers (LECs) with services including the filing of interstate access tariffs utilizing both Section 61.38 and Section 61.39 procedures. GVNW also prepares and submits information to NECA for those clients participating in the NECA settlement pools.

2. GVNW applauds the Commission for its ongoing effort to simplify regulation of small telephone companies while implementing incentives for efficient operation similar to those utilized by the telephone companies utilizing price caps. Although the proposed rules will provide additional choices for small telephone companies, the rules, as proposed, will be most advantageous to mid-sized companies with larger investment in interstate facilities. Additional flexibility and rewards will need to be included in the optional rules before a substantial number of small telephone companies will elect to participate. Our recommendations will provide specific suggestions which will increase the likelihood that small LECs will choose to participate without weakening the Commission stated goals of rate neutrality and pooling neutrality.

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II. OPTIONAL INCENTIVE REGULATION PLAN

A. Frequency of Tariff Filings

3. We support the proposal to require a tariff filing no more than once every two years. The incentive plan proposes that mid-term corrections be allowed with the LEC assuming a "heavy burden" to prove that rate changes are necessary. We believe that small LECs should be allowed to seek mid-term changes with no greater cost support burden than is required for the biennial filing. Since any mid-term tariff filing would likely result in rates for a relatively short period of time, any extra burden designed to discourage the request for relief could force small LECs to absorb unforeseen cost increases which could have a negative impact on service quality. This could also result in earnings substantially below the lower end of the earnings band simply because the cost of filing would outweigh the additional revenue requested for a limited period of time. Requiring that any mid-term correction be targeted at the lower end of the authorized earnings band would be sufficient incentive to operate efficiently and utilize the mid-term correction option only when necessary.

B. Earnings Bands

4. Expansion of the upward earnings band beyond what has been proposed is a key ingredient in encouraging participation of small LECs in the incentive plan. Many small LECs have small interstate rate base investment. Even though there is less risk associated with the incentive plan when compared to price caps, the small investment base places a substantial limit on the potential reward for small LECs. For example, a LEC with an interstate rate base of \$500,000 (large for many LECs) would only have the potential to earn an additional \$5,000 per year while incurring additional costs and risks. This potential reward is not sufficient to encourage participation. We suggest two methods to increase the incentive to participate for small LECs. First, rather than a flat 100 basis points, the upward limit could be revised to be 100 basis points or a flat dollar amount of earnings above the targeted rate of return, whichever is greater. An alternate proposal would be to increase the upward band proportionately as the size of the LEC decreases. Either of these proposals, if set at sufficiently high levels, would encourage participation of small LECs in the incentive plan.

C. Cost Basis for Incentive Plan Tariffs

5. We support the inclusion of any exogenous cost changes in the rate development without requiring a targeting of earnings at the low end of the earnings band. We also support the proposal to include known and measurable changes in the rate filing. We do not agree that any company which finds it necessary to include known and measurable changes should be required to target rate of return at the low end of the rate band. Small LECs may have little new investment for several years followed by an investment in a large project such as a switch replacement or outside plant facility upgrade. LECs in this situation will find it to their financial disadvantage to invest in new technology while on the incentive plan. In order to earn a higher return, it becomes necessary to spread investments out over time. Such a procedure is extremely difficult if not impossible for small LECs. We encourage reconsideration of this portion of the proposal.

6. In its letter of interpretation dated August 21, 1991, the FCC stated that no direct assignment of costs could take place without specific FCC order authority. This position will penalize those small LECs which wish to utilize the incentive plan and those small LECs which wish to leave the NECA pools and file their own, company specific access tariffs under either Section 61.38 or 61.39 rules. Participation in NECA pools is essentially free to small LECs, while filing their own tariffs require that company specific costs be incurred. Prohibition of direct assignment of tariff filing costs for small LECs violates the FCC's stated intent to develop rules which are "pooling neutral." Since most small LECs require outside assistance in the preparation of any interstate tariff filing, we propose authorization of direct assignment of outside expenses incurred by a LEC which chooses to file its own tariff either utilizing the Incentive Plan, 61.38 rules, or 61.39 rules. Eligible costs should include, but not necessarily be limited to, FCC filing fees, legal fees, consultant fees, and outside accountant fees.

D. New Services

7. We do not support the proposal that new services would be presumed lawful only if the rate charged did not exceed the rate charged by the geographically closest price cap regulated LEC. Small LECs do not have the same cost characteristics as the larger LECs. Requiring such restrictions may delay the introduction of new services pending complete cost justification. Using the NECA rate as a guide may be more appropriate since NECA is made up of small LECs with similar cost characteristics. As an alternative to cost justification, a more reasonable criteria would be to presume lawful the rate charged if it does not exceed the higher of the NECA rate or the geographically closest price cap rate.

8. All LECs should be allowed the flexibility to charge a cost based rate for a new service. Offering services below cost, even though similar to an adjacent company's rates or NECA's rates, is misleading to the customer. When rates are adjusted within two years to reflect actual costs, customer dissatisfaction may result.

9. We request clarification of the proposed addition to the rules in Section 61.50(i). This section states that rates for new services are presumed lawful provided they meet specific revenue and rate limitations. However, 61.50(i)(1) of the proposed rule states that a cost study is required projecting the cost of service. This contradicts the Commission's goal of reducing filing requirements and seems to conflict with the discussion contained in paragraph 16.

E. Infrastructure and Service Quality Reporting

10. We have no objection to the filing of reports as proposed. However, we suggest that the requirement to file quarterly service quality reports be modified. The service quality report should be filed every two years with the biennial tariff filings as required for the infrastructure reports.

F. Eligibility and Optional Basis

11. We support the decision that participation in the Incentive Plan should be voluntary. In order to introduce greater flexibility and increased participation, we also encourage the Commission to adopt a bifurcated approach allowing participation for traffic sensitive only. This is necessary since many small LECs serve rural areas with high loop costs. Requiring these companies to withdraw from the NECA common line pool may result in very high company specific carrier common line rates. In order to maintain carrier common line rates at a reasonable level, companies which may otherwise wish to participate in the Incentive Plan may find that they must not simply in order to maintain carrier common line rates at the national average utilized by NECA.

12. The proposal states that, if a carrier subsequently elects not to participate in the plan, it must file rates pursuant to Section 61.38 of a company-specific basis and not return to the incentive plan for four years. LECs which elect to end their participation should be allowed to utilize Section 61.39 rules in filing their company specific tariffs, or return to the NECA pools. Failure to allow this flexibility will result in increased cost and risk for those small LECs which for, whatever reason, determine that they do not wish to operate on the incentive plan. Presently, small LECs not choosing price caps can choose to reenter the NECA pools on an annual basis.

The proposed rules may provide incentives to LECs utilizing the incentive plan to remain on the incentive plan, but it will definitely discourage small LECs unsure of the eventual success or failure of the incentive plan from taking that first step of initial participation. We recommend that LECs which choose to terminate their incentive plan participation be allowed to return to the NECA pools or utilize Section 61.39 rules for filing company specific tariffs if they choose.

III. HISTORICAL COST TARIFFS FOR SMALL COMPANIES

13. We support the proposal to allow small LECs to withdraw from the NECA carrier common line pool without participation in price cap regulation. The LEC should retain the option of returning to the NECA pools on an annual basis as is presently afforded those LECs filing their own traffic sensitive tariffs. We are concerned that the proposal to reflect demand growth in historical rate development will result in the potential for underearnings in the future for carrier common line investment. Even though the investment is not traffic sensitive, increasing investment in new technology such as fiber in the loop and shorter cost recovery time frames will cause loop costs to increase. We recommend that demand for carrier common line be treated in the same fashion as traffic sensitive demand thereby allowing the self correcting mechanism built into Section 61.39 rules to function.

IV. BASELINE RATE OF RETURN REGULATION BASED ON PROSPECTIVE COST


15. We request clarification of paragraph 44. Appendix A contains no additions or revisions to Part 61.38 regarding rate development for traffic sensitive or carrier common line rates. It appears from paragraph 44 that the only difference between filing pursuant to 61.38 and 61.39 is the inclusion of exogenous cost changes to carrier common line. Please clarify the Commission's intent in allowing LECs to file carrier common line tariffs utilizing Section 61.38.

V. INCENTIVE REGULATION WITHIN NECA

16. We support the consideration of any proposals which incorporate incentive regulation within the NECA pools and look forward to evaluating any proposals which are made. It is likely that incentive regulation within a pool will have less risk than the company-specific incentive plan proposed. Any potential rewards adopted should consider the level of risk incurred when compared with those companies willing to leave the security of the pools and live with the results of utilizing their own cost based tariffs.

Respectfully Submitted

GVNW Inc./Management

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